

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE WESTERN DISTRICT OF TEXAS  
3 WACO DIVISION

4 K.MIZRA LLC \* \* September 26, 2022  
5 VS. \* \* CIVIL ACTION NO. W-20-CV-1031  
6 CISCO SYSTEMS, INC. \*

7 BEFORE THE HONORABLE ALAN D ALBRIGHT  
STATUS CONFERENCE HEARING (via Zoom)

8 APPEARANCES:

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21 Proceedings recorded by mechanical stenography,  
22 transcript produced by computer-aided transcription.

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09:31 1 (Hearing begins.)

09:31 2 DEPUTY CLERK: A Civil Action in Case

09:31 3 6:20-CV-1031, K.Mizra LLC versus Cisco Systems,

09:31 4 Incorporated. Case called for a status conference.

09:31 5 THE COURT: If I could have announcements

09:31 6 from counsel. Give me -- and I'll get my cheat sheet

09:31 7 out while you're doing that.

09:31 8 Good morning.

09:31 9 MR. ABRAHAM: Good morning, Your Honor.

09:31 10 This is Joseph Abraham of Foley Law Group here on

09:31 11 behalf of plaintiff K.Mizra LLC.

09:31 12 With me today is my partner Cliff Win of

09:31 13 Folio Law Group. And also today we have fine

09:31 14 representative, Chuck Hausman, CEO of K.Mizra.

09:31 15 THE COURT: Okay.

09:31 16 Good morning.

09:31 17 MR. UNDERWOOD: I apologize, Your Honor.

09:31 18 This is Travis Underwood for the defendant Cisco. I'm

09:32 19 joined with Liz Brannen, and we're ready to proceed.

09:32 20 THE COURT: Well, I had a trial last week

09:32 21 where some of the lawyers couldn't figure whether they

09:32 22 should talk or not, and we were in person. So it's

09:32 23 much harder on Zoom.

09:32 24 I will say I'm not sure exactly which

09:32 25 order to take this -- just in terms of lawyers because

09:32 1 of what we have from the PTAB. So why don't I start  
09:32 2 with counsel for plaintiff?

09:32 3 And then, you know, obviously,  
09:32 4 Mr. Underwood, I'll give you a chance to say whatever  
09:32 5 you care to as well. But I think this is just a status  
09:32 6 conference to figure out what we do moving forward and  
09:32 7 get your suggestions.

09:32 8 MR. ABRAHAM: Sure, Your Honor. Thank  
09:32 9 you very much.

09:32 10 And counsel -- Ms. Brannen and I had a  
09:32 11 chance to speak last week along with Mr. Win. We have  
09:32 12 some preliminary thoughts that we exchanged.

09:32 13 Basically it looks like, you know,  
09:32 14 plaintiff's position is the case should restart in  
09:32 15 fairly short order. We have an existing scheduling  
09:32 16 order that we think would mostly work, more or less  
09:32 17 picking up where we left off possibly with a little bit  
09:33 18 of extra cushion at the beginning so that everybody can  
09:33 19 get their ducks back in a row in terms of where we were  
09:33 20 in the middle of discovery and the middle of some  
09:33 21 motions on which briefing hadn't closed.

09:33 22 But that is basically where we are.

09:33 23 The '705 patent has made it out of IPR.  
09:33 24 The '892 patent, the PTAB did find invalid. We are  
09:33 25 presently considering our options as to what to do with

09:33 1 that patent going forward. Potentially severing could  
09:33 2 be an option. Potentially dismissing could be an  
09:33 3 option. But we are discussing and have not yet come to  
09:33 4 rest on that.

09:33 5 THE COURT: So if I -- I think I hear you  
09:33 6 correctly. And this -- and to some extent I do give  
09:33 7 some deference to the plaintiff here in the sense that  
09:33 8 y'all brought the case and it's your case and with what  
09:33 9 you want to do.

09:33 10 You are prepared -- you would be  
09:33 11 prepared -- I'm just -- not saying you've committed to  
09:33 12 this, but your interest is in moving forward on the  
09:33 13 case that's gotten out of PTAB, and you'll figure out  
09:33 14 what to do with the other.

09:34 15 But you would not be opposed, for  
09:34 16 example, possibly of severing it or doing what needed  
09:34 17 to be done. However you're going to protect your  
09:34 18 rights with respect to that, you can do.

09:34 19 But you would prefer for the case, with  
09:34 20 respect to the patent that is -- that got out of the  
09:34 21 PTAB to move forward. And fair summary of you -- and I  
09:34 22 don't want to misstate what you said.

09:34 23 MR. ABRAHAM: No. I would say that is  
09:34 24 broadly correct, Your Honor. Thank you.

09:34 25 THE COURT: Okay. And response?

09:34 1 MS. BRANNEN: Good morning, Your Honor.

09:34 2 Sorry. Go ahead.

09:34 3 MR. UNDERWOOD: I was going to say, I was

09:34 4 going to defer to my co-counsel Ms. Brannen. Now I've

09:34 5 spoken over people twice, so we're off to a great

09:34 6 start.

09:34 7 MS. BRANNEN: My apologies.

09:34 8 THE COURT: Yes, ma'am.

09:34 9 MS. BRANNEN: Good morning, Your Honor.

09:34 10 This is Liz Brannen. I was enthusiastic and did not

09:34 11 mean to cut Mr. Underwood off. But I'm from the law

09:34 12 firm Stris & Maher representing Cisco, and we also have

09:34 13 two client representatives with us today, Xiao Chang --

09:34 14 THE COURT: Oh, I'm sorry.

09:34 15 MS. BRANNEN: -- and Buddy Toliver.

09:34 16 THE COURT: I always try and make it a

09:35 17 point to show my appreciation for clients who take the

09:35 18 time to show up, so I'm glad you let me know that. And

09:35 19 I'm sorry we didn't get that on earlier. So welcome.

09:35 20 MS. BRANNEN: Thank you.

09:35 21 And Cisco's position is I've had the

09:35 22 chance to discuss with Mr. Abraham and Mr. Win a little

09:35 23 bit, is that as long as both patents remain live,

09:35 24 basically each party lost once and each party's

09:35 25 appealing. The stay is supposed to be in place till

09:35 1 the PTAB proceedings are resolved.

09:35 2 And as long as each side is appealing  
09:35 3 their loss, we'd like to see it stay that way.

09:35 4 We do have some other thoughts if the  
09:35 5 case is going to proceed on the '705, the one that the  
09:35 6 PTAB did not find invalid. This may be a case, you  
09:35 7 know, where it makes sense to take up a dispositive  
09:35 8 motion first rather than going full force if that one  
09:35 9 is going to go forward.

09:35 10 I've talked to Mr. Abraham and Mr. Win  
09:35 11 about that, and I don't think they're open to that  
09:36 12 either. But I did want to put that out there.

09:36 13 THE COURT: Okay. Okay.

09:36 14 So it sounds to me like your opening bid  
09:36 15 is that since they were both filed and you'd like them  
09:36 16 to both go to the Circuit at the same time and see what  
09:36 17 happens, that's probably not going to be successful.  
09:36 18 That argument probably isn't persuasive to me.

09:36 19 I feel like, you know, if it -- just from  
09:36 20 my own getting stuff done, I think you need to -- I  
09:36 21 need to move forward on the one.

09:36 22 But I -- but tell me more about the kind  
09:36 23 of motion that you think would need to be taken up  
09:36 24 earlier and let me see if that's something that would  
09:36 25 be -- make sense.

09:36 1 MS. BRANNEN: It's a motion -- and we had  
09:36 2 briefed it, Your Honor, with both patents. So we --  
09:36 3 you know, only part of the motion would matter if we  
09:36 4 move forward on the '705.

09:36 5 But it's a written description motion.  
09:36 6 There is a limitation that's in the claims that are  
09:36 7 asserted. It's in every asserted claim. And we  
09:37 8 believe on the intrinsic record it's pretty clear that  
09:37 9 they can't satisfy the written description requirement.

09:37 10 They disagree and have filed an  
09:37 11 opposition. We have yet to file Cisco's reply.

09:37 12 But I do think it's the kind of motion  
09:37 13 that may -- it's a different case than the case where  
09:37 14 there's nothing clean like that. You're either going  
09:37 15 to agree with us, and I think you will -- obviously I'm  
09:37 16 biased -- or not. But it's another thing that could  
09:37 17 really lead to an efficient path forward here.

09:37 18 THE COURT: Let me ask you this: If it's  
09:37 19 already briefed through the first two rounds and just  
09:37 20 waiting on a reply, knowing you guys, a surreply, and  
09:37 21 no one's ever happy not to get the last word in.

09:37 22 And I say all this with good humor. I  
09:37 23 did this for 20 years, so I say it as one of you and  
09:37 24 not mocking you.

09:37 25 It seems to me if it's already briefed,

09:37 1 there's no reason why I -- we couldn't get you started  
09:37 2 on the case, you know, with discovery, get a scheduling  
09:38 3 order in place my guess is well, you know, as you know,  
09:38 4 we have a standard order that y'all are free to do  
09:38 5 whatever you want by agreement or not.

09:38 6 But I would be happy -- given that you  
09:38 7 are correct that I am letting one case go forward on  
09:38 8 appeal and not the other. I would be happy to take  
09:38 9 that motion up early. In fact, that makes sense to me  
09:38 10 if it's briefed.

09:38 11 So motion -- means it's your motion. How  
09:38 12 long would you need -- how long would Cisco need before  
09:38 13 they would be able to get a reply done?

09:38 14 MS. BRANNEN: May we have two weeks, Your  
09:38 15 Honor?

09:38 16 THE COURT: This will surprise you: I  
09:38 17 have plenty to do. This is one of my favorite cases  
09:38 18 and we're sitting anxiously waiting your reply. But I  
09:38 19 think you can have as much as time as you want on it.

09:38 20 You tell -- I tell you what. You guys  
09:38 21 come up with a schedule, whatever works for y'all. I'm  
09:39 22 happy to get -- allow a surreply as well. And you guys  
09:39 23 come up with a schedule.

09:39 24 All I care about is during my screening,  
09:39 25 I put the burden on you. When everything's done and

09:39 1 ready, if you will let my law clerk know. I think this  
09:39 2 is Beth's case. And so we have a wonderful new set of  
09:39 3 law clerks. So if -- let her know.

09:39 4 And y'all are at great peril too because  
09:39 5 she may be the smartest law clerk I've had in five  
09:39 6 years.

09:39 7 And so, you know -- so I'll -- whatever  
09:39 8 happens to this one, it'll be between -- it'll be me  
09:39 9 working with a very, very talented law clerk.

09:39 10 But y'all just let us know when it's  
09:39 11 ready for a hearing. As soon as we can set a hearing,  
09:39 12 we will. If you guys would prefer to do the hearing in  
09:39 13 person, happy to do that. If you're happy doing it by  
09:39 14 Zoom, happy to do that as well. And we'll do that.

09:39 15 But y'all can go ahead -- go ahead and  
09:39 16 get in place a scheduling order. You can start getting  
09:40 17 your discovery done and all that.

09:40 18 But we'll set it quickly enough that --  
09:40 19 and, you know, we -- I don't, as you all know, for  
09:40 20 better or worse, tend to sit on these things. I don't  
09:40 21 like to have a hearing and then, like, 11 months from  
09:40 22 now tell you what I think. You know, I -- that -- I  
09:40 23 never cared for that when I was a lawyer.

09:40 24 Y'all get us -- finish the briefing, let  
09:40 25 us know the briefing's done. We'll set a hearing. I

09:40 1 will rule on it almost for sure at the hearing or very,  
09:40 2 very shortly after that.

09:40 3 But go ahead and get the other stuff on  
09:40 4 track. And assume, for purposes of that, that I'm  
09:40 5 going to deny it. Just -- I haven't even seen it. I'm  
09:40 6 just saying, just prepare as though you're going to be  
09:40 7 going to trial. But we'll take up the hearing.

09:40 8 Is there anything else we need to take up  
09:40 9 today?

09:40 10 MR. ABRAHAM: For plaintiff, I don't  
09:40 11 think so, Your Honor. I think we're clear enough about  
09:40 12 what you intend.

09:40 13 THE COURT: Okay.

09:40 14 MS. BRANNEN: Likewise for Cisco, Your  
09:41 15 Honor.

09:41 16 THE COURT: Thank you so much for being  
09:41 17 here. That was the quickest hearing ever. So y'all  
09:41 18 get extra points for that as well.

09:41 19 Have a great Monday. Take care.

09:41 20 (Hearing adjourned.)

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1 UNITED STATES DISTRICT COURT )

2 WESTERN DISTRICT OF TEXAS )

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5 I, Kristie M. Davis, Official Court  
6 Reporter for the United States District Court, Western  
7 District of Texas, do certify that the foregoing is a  
8 correct transcript from the record of proceedings in  
9 the above-entitled matter.

10 I certify that the transcript fees and  
11 format comply with those prescribed by the Court and  
12 Judicial Conference of the United States.

13 Certified to by me this 3rd day of  
14 January 2023.

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